MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Civil Commitment of:

L.D.,

Appellant-Respondent,

v.

Richard L. Roudebush Veterans Affairs Medical Center,

Appellee-Petitioner.

April 27, 2023

Court of Appeals Case No. 22A-MH-2887

Appeal from the Marion Superior Court

The Hon. Steven Eichholtz, Judge

The Hon. Melanie Kendrick, Magistrate

Trial Court Cause No. 49D08-2210-MH-37050

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

[1] In October of 2022, the Richard L. Roudebush Veterans Affairs Medical Center ("the Medical Center") in Indianapolis received a report that L.D., a Navy veteran, was approaching other persons with a machete based on her delusional belief that her children[1] were being held captive and were in danger. The Medical Center applied for an emergency detention, and L.D. was admitted on November 1, 2022. The next day, after Dr. Sydney Waller diagnosed L.D. with schizoaffective disorder, bipolar type, the Medical Center petitioned for an involuntary commitment. On November 7, 2022, a hearing was held on the Medical Center's petition, after which the trial court found L.D. to be mentally ill and gravely disabled and granted the petition. L.D. contends that her due-process rights were denied to her resulting in fundamental error and that the trial court's judgment is supported by insufficient evidence. Because we disagree with both contentions, we affirm.

Facts and Procedural History

[2] On October 26, 2022, the Medical Center applied for an emergency detention of L.D. following reports that she was approaching others "with a machete based on delusional beliefs that she has children being held captive and are in harm." Appellant's App. Vol. II p. 11. The physician's statement in the application indicated that L.D. "is well known to hold strong delusional beliefs

[1] L.D. does not have any children. (Tr. Vol. II p. 11).

and my impression is that some delusional content is resulting in acute danger." Appellant's App. Vol. II p. 12. L.D. was admitted to the Medical Center on November 1, 2022. Dr. Waller saw L.D. on November 2, 2022, and observed symptoms that caused her to diagnose L.D. with schizoaffective disorder, bipolar type, including delusions, disorganized behavior, not requiring sleep, pressured speech, and flight of ideas. The Medical Center petitioned the trial court for an involuntary commitment later that day.

[3] At the detention hearing on November 7, 2022, Dr. Waller testified regarding L.D.'s delusions as follows:

> Uhm, a consistent one has been that she has been raped by the Mayor, uhm President Barrack Obama, uhm saying she has numerous grandchildren and children by these people. Uhm, she's endorsed being molested by Janet Jackson in the past. Uhm, she also has the delusion that she's still kind of active duty in the military. Also, I've been told that she's been undercover with [Indianapolis Metropolitan Police Department ("IMPD")] since she was eight (8) years old and that she has devices in her ears uhm which the FBI and military communicate with her and broadcast uhm recordings through. Uhm, as well as the belief that she is not really herself. Her face is much smaller and has been stretched out by devices put into her, and witches and warlocks have dyed her skin to be much darker than it truly is. And uhm, people are doing this, uhm, they're out to get her and part of the reason is that they're trying to get her money and she's the owner of Starbucks. Uhm, the list kind of goes on and on, but that's kind of a brief synopsis.

Tr. Vol. II p. 11. Dr. Waller characterized the degree of L.D.'s delusional content as "extreme[.]" Tr. Vol. II p. 19.

[4] Dr. Waller also testified that L.D. was exhibiting disorganized speech, manic symptoms, and symptoms of paranoia and that there were some indications that she had been responding to internal stimuli. Upon L.D.'s admission to the Medical Center, she had weighed 114 pounds, which was down from 144 pounds in January of 2022, and Dr. Waller indicated that L.D. had reported that "she hasn't been eating at home because there was multiple people coming into her home and spitting in her food and all of these people have HIV." Tr. Vol. II p. 14. According to Dr. Waller, L.D. had "virtually no insight" into her condition and no idea why she had been admitted to the Medical Center. Tr. Vol. II p. 14.

[5] Dr. Waller opined that L.D. had schizoaffective disorder, bipolar type, and that she was gravely disabled. In support of this conclusion, Dr. Waller described L.D.'s inability to take care of her basic needs, like eating and sleeping. Dr. Waller also testified that L.D. would be unable to manage her finances due to her illness and that she was not aware of any family support for L.D. or the last time L.D. was employed. Dr. Waller indicated her belief that L.D. would not pay her rent or utilities on her own or be able to understand financial documents "to keep her household afloat." Tr. Vol. II p. 19. Dr. Waller testified, "I don't think [L.D.] would be able to pay her bills out-patient. Uhm, she told me that she hasn't paid her rent in three (3) months." Tr. Vol. II p. 17.

[6] L.D. testified that she had been working undercover for both the Navy and the Army for twenty-three years, had been working with an undercover IMPD officer, and worked for President Biden. L.D. testified that she had sixty-one

biological children and that she had paid for all of their houses. In response to questions regarding her weight loss, L.D. indicated that she had been ordered to lose weight by the CIA. L.D. also claimed to "have a case going on in veteran's right now due to rape. […] I got raped and it was by the President." Tr. Vol. II p. 34. In response to questions about paying her expenses, she stated, "I've been paying my bills. I've done [sic] bought houses. The United States Lottery is mine." Tr. Vol. II p. 35. L.D. also stated that she had been treated for hepatitis because she had been bitten by a vampire. L.D. affirmed that she had not taken any medication for her condition since February of 2021 but expressed her belief that she has never needed any medication.

[7] The trial court found that L.D. has schizoaffective disorder, bipolar I type, a mental illness as defined in Indiana Code section 12-7-2-130. The trial court also found that L.D. was gravely disabled and in need of treatment for a period expected to exceed ninety days, placement in the Medical Center was the least restrictive environment suitable for treatment, and the benefit of the proposed treatment plan outweighed the risk of harm. The trial court ordered that a periodic report be submitted to the trial court no later than November 7, 2023.

Discussion and Decision

[8] A civil commitment is warranted when the petitioner proves, by clear and convincing evidence that (1) the individual is mentally ill, (2) the individual is either dangerous or gravely disabled, and (3) detention or commitment of that individual is appropriate. Ind. Code § 12-26-2-5(e). We will affirm a civil commitment if based on the "probative evidence and reasonable inferences

supporting it, without weighing evidence or assessing witness credibility, a reasonable trier of fact could find the necessary elements proven by clear and convincing evidence." *T.K. v. Dep't of Veterans Affs.*, 27 N.E.3d 271, 273 (Ind. 2015).

> Only the trial court sees the witnesses on the stand, their demeanor in testifying, their candor, or lack of candor, in disclosing facts about which they have knowledge. Juries and trial courts, quite often, properly, give more weight to the demeanor of witnesses than to the substance of their statements in the determination of the truth. An Appellate Court, considering only the statements, is denied the assistance of this necessary factor.

B.M. v. Ind. Univ. Health, 24 N.E.3d 969, 972 (Ind. Ct. App. 2015) (citation omitted), *trans. denied*.

I. Due Process

[9] It is well-established that an involuntary civil commitment is a significant deprivation of liberty. *In re Commitment of T.K.*, 27 N.E.3d at 273. Consequently, respondents in these proceedings enjoy the hallmarks of due-process protection, which include notice of the commitment proceedings and an opportunity to be heard. *A.A. v Eskenazi Health/Midtown CMHC*, 97 N.E.3d 606, 611 (Ind. 2018). These due process protections have been codified in Indiana Code section 12-26-2-2(b), which provides as follows:

> (b) The individual alleged to have a mental illness has the following rights:
>
> (1) To receive adequate notice of a hearing so that the individual or the individual's attorney can prepare for the hearing.

> (2) To receive a copy of a petition or an order relating to the individual.
> (3) To be present at a hearing relating to the individual. The individual's right under this subdivision is subject to the court's right to do the following:
> (A) Remove the individual if the individual is disruptive to the proceedings.
> (B) Waive the individual's presence at a hearing if the individual's presence would be injurious to the individual's mental health or well-being.
> (4) To be represented by counsel.

[10] Our review of the record indicates that these due process protections were present in this case. L.D. and her counsel both received notice of the hearing, were present at the hearing, and were provided with the opportunity to cross-examine witnesses and present testimony. Indiana Code section 12-26-2-2(b) does not provide a particular timeframe for providing such notice. However, due to the expedited statutory timeframes set forth in Indiana Code sections 12-26-5-8 and 12-16-5-9 for setting and holding hearings to determine whether a patient may continue to be hospitalized, there is a high likelihood of a relatively short interval between the setting of the hearing and the hearing itself. Pursuant to Indiana Code sections 12-26-5-8 and 12-16-5-9, a hearing must be set within twenty-four hours and a hearing must be held within two days of the order setting the hearing.

[11] Here, the order setting the hearing for Monday, November 7, 2022, at 10:45 a.m. was entered on Friday, November 4, 2022. The order also appointed counsel for L.D. On the morning of the hearing, L.D.'s counsel e-filed his appearance and a consent to a remote hearing. The consent submission

indicated that L.D. had consented to a remote hearing after consulting with counsel. The Medical Center e-filed an affidavit indicating delivery of the documents to L.D. All parties were present at the commencement of the hearing at 10:45 a.m.

[12] At no point prior to the start of the hearing did L.D.'s counsel object to the adequacy of the notice provided to counsel to L.D., nor did L.D.'s counsel request a continuance or request additional time to prepare for the hearing. Any claim of inadequate notice is therefore waived as it has been raised for the first time on appeal. *See, e.g.*, *A.L. v. Wishard Health Servs., Midtown CMHC*, 934 N.E.2d 755, 758 (Ind. Ct. App. 2019) ("It is well established that we may consider a party's constitutional claim waived when it is raised for the first time on appeal."), *trans. denied*.

[13] L.D. seeks to avoid the effects of her waiver by arguing that fundamental error occurred. "Fundamental error is error which is a blatant violation of our concepts of fundamental fairness and in which the harm is substantial and apparent." *Id*. Moreover, in order to be deemed fundamental, an error must be "so likely to have infected the verdict or judgment that confidence in the correctness of the trial result has been undermined." *In re Commitment of Gerke*, 696 N.E.2d 416, 421 (Ind. Ct. App. 1998).

[14] We conclude that there was no error, fundamental or otherwise: notice of the hearing was provided to L.D. and counsel prior to the hearing and L.D. appeared at the hearing with counsel and examined witnesses, presented testimony, and provided legal argument. In short, there is no indication in the

record of anything occurring at the hearing that would undermine any confidence in its fairness. L.D. suggests for the first time on appeal that had additional notice been provided, she may have elected to interview a social worker to determine if such testimony would have been helpful. Such speculation, however, does not amount to fundamental error. We conclude that L.D. received the process due to her.

II. Whether the Commitment Order is Supported by Sufficient Evidence

[15] The facts justifying an involuntary commitment must be proved by clear and convincing evidence. *In Re Commitment of G.M.*, 743 N.E.2d 1148, 1151 (Ind. Ct. App. 2001). Clear and convincing evidence is defined as an intermediate standard of proof greater than a preponderance of the evidence and less than proof beyond a reasonable doubt. *T.D. v. Eskenazi Midtown Cmty. Mental Health Ctr.*, 40 N.E.3d 507, 510 (Ind. Ct. App. 2015).

[16] When reviewing the sufficiency of the evidence for an involuntary commitment order, we will affirm if, "considering only the probative evidence and the reasonable inferences supporting it, without weighing evidence or assessing witness credibility, a reasonable trier of fact could find [the necessary elements] proven by clear and convincing evidence." *In re Commitment of T.K.*, 27 N.E.3d at 273 (quoting *Bud Wolf Chevrolet, Inc. v. Robertson*, 519 N.E.2d 135, 137 (Ind. 1988)) (bracketed material in *In re Commitment of T.K.*). Specifically, we look to the evidence most favorable to the trial court's decision and all reasonable

inferences drawn therefrom. *R.P. v. Optional Behav. MHS*, 26 N.E.3d 1032, 1035 (Ind. Ct. App. 2015) (citing *In re Commitment of G.M.*, 743 N.E.2d at 1150–51).

[17] To obtain an involuntary commitment, the petitioner is "required to prove by clear and convincing evidence that the person is […] mentally ill and either dangerous or gravely disabled [and] detention or commitment of the person is appropriate." Ind. Code § 12-26-2-5(e). L.D. does not dispute that she is mentally ill, challenging only the evidence to support the trial court's finding that she is gravely disabled.

[18] Grave disability is defined as

> a condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual:
> (1) is unable to provide for that individual's food, clothing, shelter, or other essential human needs; or
> (2) has a substantial impairment or an obvious deterioration of that individual's judgment, reasoning, or behavior that results in the in the individual's inability to function independently.

Ind. Code § 12-7-2-96. Because this statute is written in the disjunctive, it is not necessary to prove both prongs to establish grave disability. *W.S. v. Eskenazi Health, Midtown Cmty. Mental Health*, 23 N.E.3d 29, 34 (Ind. Ct. App. 2014), *trans. denied*.

[19] Dr. Waller testified that, in her medical opinion, L.D. did not have the present ability to function independently and provide for her basic needs. When L.D. arrived at the Medical Center she was in a manic state with substantial impairments in her reasoning. At the time of admission, she endorsed a vast

array of delusions, and her thought and speech were markedly disorganized. Although six days had passed since L.D.'s admission, these symptoms continued as evidenced by the delusions and flight of ideas in her testimony at the commitment hearing.

[20] Moreover, L.D. had not been taking psychiatric medication for nearly two years and was currently refusing medication, in large part due to her lack of insight into her condition. L.D.'s refusal to take medication was due, in part, it seems, to a persistent delusion that it was her deceased sister who had been diagnosed with mental illness, not her. In short, L.D. refused to take medication to control her delusions *because* of those delusions, and Dr. Waller opined that without medication, L.D. would not be able to meet her basic needs.

[21] Although L.D. argues that she is able to meet her basic activities of daily living ("ADLs") like eating and performing basic personal hygiene, this was occurring in an inpatient setting. L.D. did not present evidence to counter Dr. Waller's observations and testimony that L.D. would not be able to meet her ADLs in an outpatient setting or engage in more complex activities like maintaining housing, managing financing, and procuring and preparing food, transportation, and making medical decisions in her manic and delusional state flowing from her untreated schizoaffective, bipolar type disorder.

[22] Indeed, L.D.'s own testimony buttressed Dr. Waller's concerns regarding her ability to function independently with her manic and delusional symptoms. When testifying regarding her employment, L.D. stated as follows: "So, I work

undercover, sir. I have multiple names at the time. I have recovered things [INAUDIBLE]. I am not unemployed. I work for the police department, as well, sir." Tr. Vol. II p. 28. It is reasonable to assume that L.D. will not seek employment when she believes herself to already be employed. Additionally, L.D. explained her weight loss as having been ordered by the CIA. L.D. also connected her issues with eating to treatment for hepatitis resulting from a vampire bite.

[23] L.D.'s refusal to take medication and Dr. Weller's testimony that she would be unable to perform basic tasks associated with independent functioning (such as feeding herself) due to marked and substantial deterioration in her judgment, reasoning, and mental status attributable to the symptoms of her mental illness provides sufficient support for an involuntary commitment. *See A.S. v. Ind. Univ. Health Bloomington Hosp.*, 148 N.E.3d 1135, 1141 (Ind. Ct. App. 2020) (concluding evidence that patient was agitated, continued to act "very inappropriately" at the hospital, and made delusional statements (including that she was Jesus) was sufficient to prove by clear and convincing evidence she was gravely disabled due to her substantially-impaired judgment). L.D.'s argument is nothing more than an invitation for us to reweigh the evidence, which we will not do. *See In re Commitment of T.K.*, 27 N.E.3d at 273.

[24] We affirm the judgment of the trial court.

May, J., and Mathias, J., concur.